

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THE GUARDIAN NEWS, INC. and SELIM
ZHERKA.

Plaintiffs,

07 Civ. 07078 (CLB)

-against-

PHILIP AMICONE, individually,
EDMUND HARTNETT, individually,
JOHN A. LISZEWSKI, individually
CITY OF YONKERS, New York,
PAUL WOOD, individually, POLICE
OFFICERS JOHN DOE'S #1 to #20,
individually, and SANITATION WORKERS
#1 to #20.

**AFFIDAVIT IN SUPPORT OF
MOTION FOR PRELIMINARY
INJUNCTION**

Defendants.

-----x
STATE OF NEW YORK)
)ss.:
COUNTY OF WESTCHESTER)

SELIM ZHERKA, being duly sworn, deposes and says:

1. I am the President and owner of The Guardian News, Inc. and The Westchester Guardian. I submit this affidavit in support of the Plaintiffs' motion for a preliminary injunction barring the Defendants' from: i) confiscating any newsracks placed by The Guardian News, Inc. in the City of Yonkers for distribution of The Westchester Guardian; confiscating any copies of The Westchester Guardian intended to be distributed on City-owned premises within the City of Yonkers; threatening employees of The Guardian News with arrest/incarceration for distributing The Westchester Guardian within the City of Yonkers; threatening your affiant with arrest/incarceration for distributing The Westchester Guardian within the City of Yonkers; issuing to said

employees and your affiant appearance tickets charging us with violating the City Charter for distributing The Westchester Guardian; and *inter alia* directing the Defendants to return to forthwith Plaintiffs all of the confiscated newsracks and newspapers.

2. On the front page of the Guardian published July 5, 2007, the headline was: "Amicone Sells Out Families of Yonkers. . . Enbraces Giulio Cavallo; Brings in Nick Spano Mob". In that connection:

a. A page "2" article referenced Amicone as a "Man Who Would: Take the endorsement of Nick Spano, a fallen, crooked politician, and create taxpayer-funded jobs for his mob; Bring Giulio Cavallo, a political prostitute who sells cross-endorsements for cash, into the election process; Run on a party line whose chairman, Zehy Jereis, is an election fraudster and a convicted drug dealer", and,

b. A page "4" editorial that, *inter alia*, expressed the following "Opinion": "Such has been the sordid tale of recent elections in Westchester, and particularly in the City of Yonkers. Given that history, we believe that the race for Mayor of Yonkers, pitting incumbent Republican Phil Amicone, and every undesirable political creature he can muster, against Independent Nader Sayegh, and Democrat Dennis Robertson, in a context that will require the utmost attention of the Voters' Rights Division of the Justice Department, and the provision of sufficient observers and enforcement personnel to protect the integrity of the outcome."

3. On the front page of the Guardian published the week of July 9, 2007, the headline read:

"A Tale of Two Cities", beneath which to the left was a photograph of the

Mayor of Mount Vernon, New York (Ernie Davis), and beneath which to the right was a photograph of Amicone. The Davis photograph bore the legend: "DUMB". The Amicone photograph bore the legend: "DUMBER" (hereinafter collectively referred to as "DUMB & DUMBER") - - in connection with which readers were invited to "See In Our Opinion, p4".

4. In the editorial concerning the front page story, captioned "In Our Opinion . . . Sodom and Gomorrah", the Guardian expressed *inter alia* the following thoughts regarding Davis and Amicone:

"We must sadly conclude that Davis and Amicone have each been abject failures, little more than caretakers, at best, not likely to improve the circumstances of the city they have been entrusted with, if placed back into their present positions. In short, we believe Ernie Davis and Phil Amicone have not only squandered vast human and financial resources, but also the wonderful opportunity to bring about significant positive change.

Consider the fact that Mount Vernon and Yonkers are each under Federal Investigation. . . in connection with projects and programs involving huge sums of money. . . There's a distinct odor of fish somehow attached to these financial mysteries.

. . . As regards crime, there is no denying that street crime and gun violence in both Yonkers and Mount Vernon have been spiraling out of control under Amicone and Davis respectively. Additionally, the Yonkers Police Department has had, and continues to have,

a well-deserved reputation for police brutality, a problem neither Phil Amicone nor Commissioner Hartnett have made any convincing effort to abate.

* * *

The decay and destruction of formerly strong, proud neighborhoods and public schools under Davis and Amicone has been the inevitable product of corrupt, uninspired administrations more concerned with satisfying and fattenening political powerbrokers and criminal elements such as Giulio Cavallo, Zehy Jereis, Nicky Spano, Larry Schwartz, Reggie LaFayette, and their ilk. . .In short, we believe Ernie and Phil have been marching to the beat of the wrong drummer for quite some time, and are not likely to alter their cadence anytime soon."

5. Commencing during the week of July 9, 2207, and continuing thereafter, a number of Guardian employees and your affiant repeatedly sought to non-disruptively distribute inside and/or outside Yonkers' City Hall:

- a. Copies of DUMB & DUMBER as contained in the Guardian
- b. Copies of the July 26, 2007, Guardian the front page headline of which reported: "Guardian Publisher Offers \$25,000 Reward For Information Leading to the Arrest and Conviction of Westchester Public Officials and Politicians Who Have Broken the Law and Betrayed the Public Trust", and,
- c. Copies of the August 2, 2007. Guardian the front page headline of which read: "Phil Amicone A Huge Flop! Fails to Deal With Police Brutality. Sharpton Correctly Identifies Problem As Not Targeting Only the Minority Community".

6. In that connection pursuant to a self-evidently coordinated action orchestrated by Amicone, Hartnett, Liszewsky, their co-defendants and numerous members of the City's Police and Public Works Departments, all of those copies of the Guardian were repeatedly confiscated and discarded by Defendants - - conduct manifestly motivated in whole or in substantial respect by the substantive content of the Guardian concerning Amicone and the Yonkers Police.

7. Also in that connection and pursuant to the same self-evidently coordinated action, Guardian newsracks were repeatedly confiscated and discarded by Defendants under the direction of Liszewski, action taken by similarly motivated hateful conduct observed by your affiant.

8. As a further consequence of that self-evidently coordinated action, Defendants repeatedly and daily targeted employees of The Guardian News, Inc. in your affiant's presence, as indicated *infra*, threatened them with arrest, and charged them criminally - - with the same apparent motivation and the objective of entirely stopping dissemination of the Guardian in and about City Hall and the City because of its substantive content.

9. By way of contrast and to your affiant's personal knowledge publications favorable to Amicone and the City (such as "Yonkers City of Vision") were permitted by the Defendants to be dispensed from *inter alia*:

- a. A newsrack, located on a stairway in City Hall, and
- b. A counter at a security desk in City Hall as manned by a uniformed Police Officer.

10. Also by way of contrast and to your affiant's personal knowledge, persons distributing the publications favorable to Amicone and the City were permitted with impunity by Defendants to place those periodicals:

- a. In the stairway newsrack referenced *supra*, and,
- b. On the security desk counter as referenced *supra*.

11. As a proximate result of Defendants' conduct your affiant and employees of The Westchester Guardian, Inc. in your affiant's presence were confronted by City Police Officers, including Defendant Paul Wood and

- a. Ordered to cease distributing the Guardian on the supposed premise that its distribution was illegal in Yonkers,
- b. Issued criminal informations charging them and your affiant with distributing the Guardian,
- b. Ordered to leave the premises,
- c. Threatened with arrest/incarceration should they return to distribute the Guardian, and,
- d. Coerced to depart from the City by intimidation.

12. For the reasons set forth in the accompanying memorandum of law it is submitted that: i) the wholesale violations of the Plaintiffs' rights as guaranteed by the First Amendment constitutes irreparable injury; ii) Defendants' conduct is patently illegal and will result in a judgment favorable to Plaintiffs.

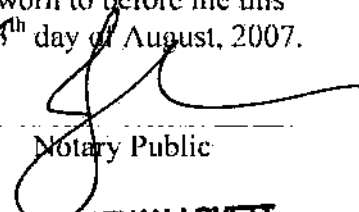
WHEREFORE a preliminary injunction should be granted barring the Defendants' from: i) confiscating any newsracks placed by The Guardian News, Inc. in the City of Yonkers for distribution of The Westchester Guardian; confiscating any

copies of The Westchester Guardian intended to be distributed on City-owned premises within the City of Yonkers; threatening employees of The Guardian News with arrest/incarceration for distributing The Westchester Guardian within the City of Yonkers; threatening your affiant with arrest/incarceration for distributing The Westchester Guardian within the City of Yonkers; issuing to said employees and your affiant appearance tickets charging them with violating the City Charter for distributing The Westchester Guardian; and *inter alia* directing the Defendants to forthwith return to Plaintiffs all of the confiscated newsracks and newspapers.


Selim Zherka

Sworn to before me this
13th day of August, 2007.

Notary Public


JONATHAN LOVETT
Notary Public, State of New York
No. 4666713
Qualified In Westchester County
Commission Expires November 30, 2010